

REMARKS

In the Office Action dated December 22, 2010, claims 1-15 were presented for examination. Claims 1-15 were rejected under 35 U.S.C. §112, first paragraphs. Claims 11-15 were rejected under 35 U.S.C. §112, second paragraphs. Claims 11-15 were rejected under 35 U.S.C. §101 as directed to non-statutory subject matter. Claims 1-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Newson*, U.S. Patent No. 6,904,059, in view of *Yoshida*, U.S. Patent Application Publication No. 2002/0075894, and in view of *Simonson*, U.S. Patent No. 7,221,660.

I. Rejection of Claims 1-15 Under 35 U.S.C. §112, first paragraph

In the Office Action dated December 22, 2010, the Examiner rejected claims 1-15 under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. Applicants have amended claims 1, 6, and 11 to removed the controversial language indicated by the Examiner. In view of the amendments above, the rejection under 35 U.S.C. §112, first paragraph, is moot. Accordingly, Applicant respectfully requests that the Examiner remove the rejections herein and grant an allowance of the pending claims.

II. Rejection of Claims 11-15 Under 35 U.S.C. §101

In the Office Action dated December 22, 2010, the Examiner rejected claims 11-15 under 35 U.S.C. §101 as directed to non-statutory subject matter. More specifically, the Examiner raised a concern that a computer readable medium can be interpreted as a propagation medium which is non-statutory. Applicant has amended claim 11 to replace “computer readable medium” with “computer readable memory.” Memory is a hardware element which is statutory. Support for the amendment is found in paragraph 0026 of Applicant’s publication. No new matter has been added with the amendment submitted herewith. Accordingly, Applicant respectfully requests that the Examiner remove the rejections herein and grant an allowance of the pending claims.

III. Rejection of Claims 1-15 Under 35 U.S.C. §103(a)

In the Office Action dated December 22, 2010, the Examiner rejected claims 1-15 under 35 U.S.C. §103(a) as being unpatentable over *Newson*, U.S. Patent No. 6,904,059, in view of

Yoshida, U.S. Patent Application Publication No. 2002/0075894, and in view of *Simonson*, U.S. Patent No. 7,221,660.

Applicant's remarks made with respect to *Newson* and *Yoshida* in previous communication are incorporated by reference herewith.

As noted in previous communication, *Newson* teaches that once a **packet arrives at its destination**, header and trailer are stripped off. Payload is reassembled into a data stream with the payloads of other packets based on the numbered sequence of packets. See Col. 5, lines 7-10. Accordingly, *Newson* teaches stripping the header from a packet at the packet destination.

Yoshida teaches a packet, that does not always transmit actual data and includes only a header. See paragraph 0019. The combination of *Newson* and *Yoshida*, as suggested by the Examiner, would render a system where a payload of *Newson* is attached to a new header. However, *Newson* teaches the payload stripped off of the header only at a destination. Thus, the payload of *Newson* does not require a header specifying a destination address since it is not supposed to be sent anywhere. Neither *Newson* nor *Yoshida* provide suggestion or motivation to combine the header of *Yoshida* with the payload of *Newson*. Accordingly, *Newson* and *Yoshida*, applied individually or in combination, do not teach attaching a broadcasting payload stored local to a receiving router to each header information arriving at the receiving router separately from the broadcasting payload.

The Examiner employs *Simonson* as a prior art reference in relation to the limitation pertaining to a group of broadcasting packets associated with a specific payload. *Simonson* teaches a control computer coupled to each router. A repeater is coupled to a router. The first time the repeater keys up, it will send a control message to the control computer. The message will be returned specifying a multicast address to be used. The repeater then can send packets to the router connected to the repeater. The router performs splitting of the packets in accordance with control messages received and distributed by the control computer. Thus, each individual router implements the multicast routing function and the switching is performed based on which router is registered for a multicast address.

It should be noted that combining the system of *Newson*, that reassembles payloads of different packets into a data stream at destination, with the multicast of *Simonson* would render reassembling of equivalent payloads from different packets. It is not clear to the Applicant why equivalent payloads should be reassembled into a data stream. It is Applicant's position that there is no motivation to combine the system of *Newson* with the system of *Simonson*.

Furthermore, the Examiner does not provide any motivation to combine the references of *Newson*, *Yoshida*, and *Simonson* except for their teachings being in the same environment. See pages 6 and 7 of the outstanding Office Action. This statement set forth by the Examiner fails to articulate a reasoning of obviousness to combine the prior art. "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."¹ Furthermore, "[a] statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references."² However, this is exactly what the Examiner has set forth in the outstanding Office Action. There is always a temptation to read into the prior art the teaching of the invention and combine known elements of prior art, as demonstrated in the outstanding Office Action in the manner set forth by the Examiner. Accordingly, the burden rests with the Examiner to articulate reasoning with some rational underpinning to support the legal conclusion of obviousness. It is Applicant's position that the position set for by the Examiner in the combination of *Newson*, *Yoshida*, and *Simonson* is not proper under 35 U.S.C. §103(a) as the Examiner has failed to properly articulate their reasoning behind the proposed combination.

¹ *KSR International Co. V. Teleflex Inc. et al.*, 550 U.S. _____, 127 S.Ct. 1727 (2007), quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

² MPEP §2143.01, citing *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

Furthermore, it is understood in the law that under 35 U.S.C. §103(a), all the claim limitations must be taught or suggested on the prior art. If the prior art references do not teach or suggest every claim limitation of the Applicant's invention, then they do not meet every requirement under 35 U.S.C. §103(a) and are not sufficient to uphold a rejection under 35 U.S.C. §103(a). As noted above, *Newson*, *Yoshida*, and *Simonson* do not teach broadcasting packets (having identical payloads and different headers), wherein a payload is stored inside a receiving router and subsequently attached to a header with the header arriving at the receiving router separately from the payload. Accordingly, based upon the failure of the prior art to teach all of the claimed limitations, as well as the Examiner's failure to articulate a motivation for combining the references, Applicant respectfully requests that the Examiner remove the rejections herein and grant an allowance of the pending claims.

IV. Conclusion

In view of the forgoing remarks to the claims, it is submitted that all of the claims remaining in the application are now in condition for allowance and such action is respectfully requested. Applicant is not conceding in this application that those claims in their prior forms are not patentable over the art cited by the Examiner, as the present claims are only for facilitating expeditious prosecution of the application. Applicant respectfully reserves the right to pursue these and other claims in one or more continuation and/or divisional patent applications. Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application, the undersigned respectfully requests that she be contacted at the number indicated below.

Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. Accordingly, Applicant requests that the Examiner indicate allowability of claims 1-2, 4-7, 9-12, and 14-15, and that the application pass to issue. If the Examiner believes, for any reason, that personal communication will expedite prosecution of the application, the Examiner is hereby invited to telephone the undersigned at the number provided.

For the reasons outlined above, withdrawal of the rejection of record and an allowance of this application are respectfully requested.

Respectfully submitted,
By: /Rochelle Lieberman/
Rochelle Lieberman
Registration No. 39,276
Attorney for Applicant

Lieberman & Brandsdorfer, LLC
802 Still Creek Lane
Gaithersburg, MD 20878-3218
Phone: (301) 948-7775
Fax: (301) 948-7774
email: rocky@legalplanner.com

Date: March 22, 2011